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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourteenth session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 2 May 1996, at 3 p.m.

Chairperson: Mr. ALSTON

later: Mr. GRISSA

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The meeting was called to order at 3.05 p.m.

ORGANIZATION OF WORK

1. The CHAIRPERSON recalled that the secretariat had been negotiating an arrangement with the Economic Commission for Latin America and the Caribbean (ECLAC) that would involve a more formal exchange of information about the situation in countries covered by the Commission, an arrangement that could develop into something more substantive. He took it that the Committee wished him to send a letter to ECLAC to the effect that the Committee would welcome the receipt of as much information on economic, social and cultural rights as it had to offer and that the Committee would happily share its relevant information with ECLAC.

2. It was so decided.

3. Mr. Grissa took the Chair.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Spain (continued) (E/1994/104/Add.5; E/C.12/1995/LQ.2/Rev.1; HRI/CORE/1/Add.2/Rev.2)

4. At the invitation of the Chairperson, Mr. Nuñez, Mr. Gomez-Lobo, Mr. Gonzalez de Linares, Mr. Avila, Mrs. Sanchez Garcia, Mrs. Ayuso Estivez and Mr. Gonzalez Escolar (Spain) took places at the Committee table.

5. The CHAIRPERSON invited the members of the delegation to answer questions put by the Committee at the 3rd and 5th meetings.

6. Mr. GOMEZ-LOBO (Spain) said that it took a three-stage process of five or six years for foreigners to obtain a permanent residence permit or permanent work permit in Spain; in the meantime they automatically enjoyed all the inalienable individual rights guaranteed under the Constitution, as listed in paragraph 17 of the report (E/1994/104/Add.5). After having received either the initial temporary residence permit or the initial work permit, they enjoyed, in addition, all rights guaranteed under Royal Decree No. 1119/1986 approving the implementing regulations of Organization Act No. 7/1985 concerning the rights and freedoms of foreigners, which included the right to freedom of movement, the right of assembly, the right to join trade unions, the right to legal assistance and protection of the courts, the rights to education, welfare benefits and health care, a restricted right to vote and many others.

7. Foreigners could indeed form and join trade unions under both article 2.7 of Organization Act No. 11/1985 relating to trade-union freedoms and article 4 of the Workers' Statute, neither of which established any restrictions on the grounds of national origin, and under ILO Convention No. 87, concerning Freedom of Association and Protection of the Rignt to Organize, which Spain had ratified.

8. With regard to undocumented foreigners, the third campaign to legalize their status had begun on 23 April 1996; those of 1990 and 1991 had succeeded in legalizing 128,000, and it was hoped that the current campaign would legalize 35,000 to 40,000. Any undocumented foreigner and his family members, as well as any undocumented family member of a legal resident, who since 26 May 1986 had been present in Spain and was in possession of some type of work or residence permit or simply some kind of registration as a foreigner, and who was not currently involved in expulsion proceedings or criminal proceedings, was eligible to apply for legalization. Since Royal Decree No. 155/1996 specified that all foreigners must obtain a residence permit, foreigners who chose not to legalize their status were liable to expulsion from the country for a minimum of three years, a process carried out openly in several stages, with legal safeguards throughout, including time-limits on any pre-trial detention.

9. Spanish law (Act No. 5/1984 regulating the right of asylum and refugee status) went further than the 1951 Geneva Convention relating to the Status of Refugees in that it granted refugees and asylees the right of residence and the right to work in Spain, with a special humanitarian provision facilitating the employment of those fleeing conflicts. The law was now applied very scrupulously to avoid manifestly unfounded or abusive applications - very common in the past - by those who in reality were economic immigrants. Spain had recently simplified and expedited its system for the review of applications for asylum or refugee status, as recommended by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Conclusion No. 30 (XXXIV) (1983) adopted by the Executive Committee of the UNHCR Programme. The number of refugees and asylees was in fact declining in Spain, in part because of the more stringent scrutiny of applicants, and in part because of the Government's generous legalization, residence and employment offers specifically targeting all foreigners who genuinely desired to live and work in the country.

10. By law (report, para. 21 (b) (i)), the salaries and working conditions of foreigners were equal in all respects to those of nationals. Under Royal Decree No. 155/1996, foreigners who wished to work were required to apply for a work permit, generally granted at the same time as the residence permit, and employers were prohibited from hiring foreigners without one. Immediate family members of a legal resident with a work permit were given preferential consideration for work permits. Students were generally not authorized to engage in paid work, but could receive exceptional authorization for part-time employment consistent with their studies, provided it was not their sole means of support.

11. Regarding the status and nature of the Gypsy minority in Spain, there were many different and varied Gypsy communities, although all maintained a single identity, culture, value system, social structure and language. According to the Ministry of Social Affairs, there were probably 600,000 Gypsies in Spain, although their numbers could not be determined precisely and they were now mostly sedentary. The Gypsy communities were concentrated in the Autonomous Communities of Andalusia, Valencia and Murcia and the big cities (Madrid, Barcelona, Seville, Granada, Valencia, Zaragoza and Bilbao). It was a young population, almost half estimated to be under 16 and very few over 65. There were more men than women, and the birth rate was

four times the national average. The family was the basis of Gypsy social structure and children received only general education. Their main occupations were street vending, scrap collection and seasonal farm work, although little by little they were becoming trained in more skilled work.

12. Measures taken by the Government in support of Gypsies included affirmative action programmes and general policies to alleviate their poverty; special programmes to assist with the integration of Gypsies into the labour force; better access of Gypsy families to the so-called "welfare wages" available in the communities in which they lived; and better access to subsidized public housing under the Housing Plan and the special Plan for the Rehousing of Gypsies being implemented in the large cities. In Madrid, for instance, under the Rehousing Plan, 3,727,000 pesetas had been spent between 1986 and 1995, and close to 2,500 housing units had been built or planned. Housing in the Gypsy communities did not fit the standardized concept of urban housing, being closer to an agrarian, non-urban model. The eradication of shanty towns inhabited by Gypsies was made difficult by the legal problems involved in interference with the right to shelter, even if temporary and illegal, and by the need to respect the customs of an ethnic minority: persons could not be forced to live in conditions which for any reason they deemed unacceptable. Nevertheless, Gypsies were increasingly availing themselves of their eligibility for public housing.

13. Mrs. BONOAN-DANDAN asked how, if accurate data were not available on shanty towns in general, not simply those occupied by Gypsies, reliable data could be available on the construction programmes to replace them.

14. Mr. GONZALEZ de LINARES (Spain) said that municipal governments did have such data but it had not been possible to compile them at the national level.

15. Mr. AVILA (Spain), replying to the question concerning subjects taught and degrees awarded in university-level distance education, said that the subjects were the traditional ones taught in universities, and the procedure was substantially the same as well. What were different were the methodology of teaching, the system of communication and the method of assessment. In 1988, there had been 107,000 graduates and in 1992, 121,879; such courses constituted an important means of access to higher education especially for people over the age of 25, and the quality of the education provided was rising. Higher degrees were awarded, as well as first degrees.

16. As for the legislation providing for direct admission to university courses for persons over the age of 25, he said that since 1970 it had been possible for that age group to gain admission to courses without qualifications; they merely had to pass two basic specific tests, which were held twice a year. Once they were accepted, they took an orientation course which helped them to adapt to university studies.

17. On the question of the academic regime in private universities and the recognition their degrees enjoyed, he said that although the private universities operated according to their own rules (subject to official approval), the academic regime was the same as that of public universities. Common general guidelines were laid down for both, but degrees awarded by private universities did not enjoy automatic official recognition. Private

universities had their own rules and regulations, which were subject to official approval. The private universities were structured in a similar way to the State universities - with faculties, departments and chairs. Staff teaching in private universities held employment contracts, but unlike their opposite members in the State universities they did not have civil-servant status. Teaching posts in public universities were secured through competition, while private universities were able to select and hire the staff they wanted. Teaching staff in public universities were able to give classes in private universities. There were significant variations in the salaries paid by the private universities, so comparison with the public university system was difficult. Comprehensive figures from a report published in 1995 would be made available to the Committee. The legal status of free education in Spain was guaranteed by two fundamental Organization Acts and by article 27 of the Constitution.

18. Concerning the level and type of university studies, he explained that first-cycle studies in themselves constituted university training; the period of study was short but a diploma was awarded when it was completed; the subject areas to which it applied included social work, teaching, nursing and physiotherapy. Then there were university studies comprising two cycles lasting five years, successful completion of which led to the award of the degree of Cicenciado. In that case, the first cycle did not normally culminate with a diploma but in some two-cycle courses (e.g. some technical subjects and engineering) a diploma was awarded at the half-way stage. In certain subjects it was possible to obtain a licenciado after the first three years, for example, languages and the history of music. Third-cycle studies - lasting two years - led to a doctorate.

19. Clarification had been requested regarding scholarships and grants. In 1985, they had cost 17,863 million pesetas; by 1995 the figure had risen to 91,278 million pesetas. The corresponding figures for the number of students receiving scholarships were 381,000 in 1985 and 850,000 in 1995. In 1993 and 1994, the amount of money disbursed for scholarships had been allocated in the following proportions: 2.2 per cent for preschool education, 2 per cent for primary education, 34.3 per cent for secondary education and 61.5 per cent for university education. The relatively low proportions for the first two categories were due to the fact that they were both compulsory and free. The distribution of scholarships in 1993 and 1994 was 5.2 per cent for preschool education, 2.3 per cent for primary education, 26.5 per cent for vocational training, 34 per cent for the Bachillerato and 32 per cent for university education.

20. Spain's decentralized education system made it difficult to speak of a common core framework, but there was an official curriculum in which the State set minimum standards to be met throughout the country. Fifty-five per cent of the core curriculum was common to all and taught in one of the country's official languages; 10 per cent of the core curriculum must be taught in the language of the Community concerned; and 35 per cent was variable according to local choice and requirements.

21. The law in Spain protected diversity in education, and devoted particular attention to students with special education needs resulting from personal ability and circumstances, or personal school history, background or origin,

for example by virtue of their belonging to a disadvantaged group. There was a programme to deal with absenteeism and drop-out which was targeted at disadvantaged groups. The educational establishment concerned cooperated with the social and cultural services and the local authority, and welcomed the participation and collaboration of NGOs and parents' associations. There was also the possibility of NGOs representing disadvantaged groups who were experiencing difficulties at school with a view to helping them to make their requirements and opinions more clearly understood.

22. Spain operated a system, which was part of the Socrates Programme, to help groups like Gypsies, immigrants, seasonal workers and people who for reasons of health could not attend school to get a better education; in the case of persons of foreign origin it helped them to acquire a better understanding of their mother tongue and culture. Such programmes existed for the children of Portuguese and Moroccan immigrants; Spanish children could also take part and learn Portuguese and Arabic. Some 4,500 students of non-Moroccan origin were currently studying the language and culture of Morocco: two thirds of them were Spanish and the rest Portuguese.

23. As to human rights education, the compulsory school curriculum comprised the teaching not only of human rights, peace, tolerance and freedom, but also of ecology and the protection of nature. In Spain it was seen as particularly important to develop positive personal attitudes to such matters.

24. Mrs. SANCHEZ GARCIA said that the basic difficulty in eliminating wage differentials between men and women was that women had entered the labour market relatively recently and were still the victims of deep-rooted cultural stereotyping. Most managers were still men, and in spite of rapid recent advances in employment, women were still valued more for their reproductive and domestic functions. There was a greater need to reconcile their professional and private lives in the case of women than in the case of men. Collective labour agreements had not evolved sufficiently, and when men performed jobs that were also done by women they usually gave themselves different, grander titles.

25. At entry to the job market, the differential between young men and young women was much less, but the persistence of cultural stereotypes meant that young women had fewer opportunities for advancement, which led in the end to wage differentials. The classification of jobs in collective bargaining could also lead to indirect discrimination. Some positive results in respect of equal pay had been obtained through the courts. The right to equal pay was expressly stated in article 28 of the Workers' Statute. The Women's Agency had appointed a group of experts and union officials to study the effect of job classification on indirect wage discrimination. The Agency's current aims in the matter were to encourage clauses prohibiting discrimination in collective labour agreements, to promote the sharing of domestic responsibilities, and to promote the access of women to employment and widen the range of jobs open to them.

26. Single-parent families tended to be headed more by women for various reasons, one being that, in the event of divorce, custody of the children was usually awarded to the woman. Whether or not a woman was legally married had no effect on her status. The children of non-matrimonial unions had exactly

the same rights as other children. State guardianship of abandoned children who became wards of the State or the Autonomous Communities lasted until the age of majority.

27. There were a number of programmes for women subjected to domestic violence or sexual aggression, but none were specifically directed towards Gypsy women. Women were encouraged to report any attacks and steps had been taken to sensitize male police officers to the importance of such reports. Under the programmes, women were given information, safe housing where they could have their children with them, legal aid, psychological counselling and help in returning to social life and work. In response to the question about special difficulties for women in regard to conditions of work, she said that sexual harassment had been designated as an offence under the new Criminal Code. There were more women than men in part-time or temporary work but the high unemployment rate was in part responsible. Women's participation in political life was growing: their representation in Parliament had increased by 22 per cent since 1993.

28. Mr. ADEKUOYE asked whether there was any wage discrimination in the civil service and whether there was a government programme to educate both sexes in order to stem violence against women.

29. Mrs. BONOAN-DANDAN asked what measures the Government planned to take to prevent sexual harassment in the workplace.

30. The CHAIRPERSON asked how abandoned children were taken care of and how many children there were in that category.

31. Mrs. SANCHEZ GARCIA (Spain) said that there was some indirect discrimination in the civil service but much less than in other employment. Steps were being taken to improve opportunities for advancement. There was no wage discrimination. She believed that education was essential to combat violence of all kinds, not just against women. The Government was taking steps to end sexual harassment at work and the Third Plan for Women contained a number of programmes to that end. There were very few completely abandoned children in Spain: the problem was rather one of ill-treatment or lack of care at home. The State protected such children through judicial procedures which offered guarantees to all parties concerned. Efforts were made to keep such children in a family environment, if necessary through foster care.

32. Mrs. AYUSO ESTEVEZ said a question had been asked about the implementation of the NOW/INEM Local Corporations Plan referred to in paragraph 45 of the report. The Women's Agency had been established in 1983. Subsequently, the Government had adopted its First Plan for Equal Opportunity for Women (1988-1990). Experience with the First Plan had led to the adoption of the Second (1993-1995), which had aimed at improving employment prospects through training and counselling and at encouraging entrepreneurship among women. It had also sought to encourage a positive attitude in both public and private undertakings regarding access by women to posts of responsibility. As part of the Second Plan, the Women's Agency had devised an Integrated Plan for Access to Employment, in cooperation with the National Employment Institute (INEM) and local corporations. The aim of that Plan had been to create a network of services for women job-seekers. It operated in 14 Spanish

provinces, covering all geographical areas of the country, and involved five services: GIRAs, for women entering the world of work; "Descubre otras profesiones" (Find out about other jobs), designed to introduce unemployed women to non-traditional areas of work; NOVA, which offered special innovative training to groups of women in need of a special response; MABEM, which offered instruction in job-seeking; and ENTREPRENEURS, which helped women create their own jobs through technical assistance, special training and support for small businesses set up by women. On completion of the Plan in 1994, the tools and methodologies used had been incorporated in the Integrated Employment Services for application throughout Spain.

33. In 1995, a new agreement had been signed between the Unit administering the European Social Fund of the Ministry of Labour and Social Security and the Women's Agency to develop a new plan, NOW II (1995-1999). The new plan was to be carried out through three programmes: the programme of technical assistance to women entrepreneurs, the Rural Women's Network and OPTIMA, the programme for equal opportunity at work. The first programme was for women already running, or wishing to start, their own business. The second was directed at rural women, who were becoming more independent and developing new roles. They already engaged in various activities to supplement the family income, and the programme was designed to help them to become more skilled. The third programme, OPTIMA, which was being carried out by the National Women's Agency, the Andalusian Women's Agency and the Basque Women's Agency, was designed to support firms which took affirmative action to employ and promote women and to encourage their participation in top posts and in jobs where they were under-represented, with a view to achieving a better utilization of human resources. The human resources represented by women, so important to the national economy, were at present mismanaged.

34. The new plan, NOW II, like the old one, was managed by the Unit administering the European Social Fund within the Ministry of Labour and Social Security. Any woman wishing to work for the first time or to re-enter the job market could use the services of the programmes. The effects were felt throughout Spain, since the governments of all the Autonomous Communities and many municipalities and private associations proposed projects for coordination by the Women's Agency. The first Plan had been of great value and constituted a very important aspect of the work of the Women's Agency.

35. In reply to Mr. Ceausu, Mr. GONZALEZ ESCOLAR (Spain) said that 160,000 disabled persons in Spain were currently in receipt of a monthly disability pension of 25,000 pesetas, with further benefits covering health costs, carers, wheelchairs and transport. About 6 per cent of public-service employees were disabled.

36. Enterprises were awarded incentives of over 500,000 pesetas for employing disabled persons. If temporary apprenticeship contracts became permanent, additional assistance was received and taxation on the company reduced. Since 1982, the total number of disabled persons employed through incentive schemes had exceeded 30,000; in 1995 alone there had been 4,000.

37. Subsidies amounting to a total of 1 million pesetas were provided by the State to promote the employment of disabled persons in 351 Special Employment Centres. Contracts awarded to disabled persons in 1994 had numbered 4,444,

and the figure was steadily rising. In occupational centres, severely disabled persons received occupational therapy rather than employment.

38. Given Spain's high unemployment rate, measures to promote the employment of young people included apprenticeship contracts and the setting-up of placement agencies and temporary work agencies. Those schemes were covered by three Acts adopted in 1994.

39. He enumerated various policies devised by the Ministry of Labour and the National Employment Institute for improving employment opportunities. They included investment in vocational training, labour reform, more flexible human resource management, part-time work, coordinated employment services, wage cost reduction policies, lowered contributions, the reduction in labour costs of certain communities, schemes to improve the effectiveness of labour market policies, reallocation of unemployment funds to the most effective employment schemes, measures to encourage young people to actively seek work, improved intervention services, authorization for temporary work agencies and employment policies focused on specific sectors of the population such as young people, women, the long-term unemployed and older persons. As a result of those policies, 370,000 new jobs had been created in 1995 and 180,000 fewer people registered as unemployed.

40. In response to questions by Mr. Grissa and Mr. Texier on youth unemployment, he said that over the past decade, approximately 300,000 people under the age of 25 had registered as unemployed, representing a reduction of 600,000. There were also 55,000 fewer employees under 25. The reduction of unemployment in that sector was greater than for adults. Young people's situation had improved, although their unemployment rate was still higher than their overall employment rate.

41. It must be remembered that the current generation of young people were the best educated in Spanish history. The Ministry of Labour had organized a vocational training scheme for 45,000 young people in 1995. Firms were given incentives for awarding apprenticeship contracts to young people and subsidies for permanent contracts. In 1994, the scheme had helped over 250,000 young people to find work.

42. If a young person were to lose his job, he was entitled to the same benefits as any other worker, irrespective of age. If he was not entitled to unemployment benefit for some reason, little assistance was available unless he lived with his parents, in which case they could claim family education grants for dependent children. Students were also entitled to grants and orphans could claim social-security benefit.

43. There were basically two types of unemployment benefit: contributory benefits and nationwide income support benefits. In Andalusia and Extremadura where unemployment was higher, subsidies existed for farmers. The amount of contributory benefit depended on the contributions made during the six months preceding redundancy. Other criteria for determining benefit levels included the number of dependent children. The duration of such benefits varied from four months to two years, depending on the number of days for which contributions had been paid over the preceding six years. Unemployment benefit could be awarded for between 3 and 30 months depending on individual

circumstances. Persons over 54 could also claim benefit until they reached retirement age. Such subsidies generally amounted to 75 per cent of the average minimum wage. In Andalusia, it was payable for between 90 and 360 days.

44. Unemployment contributions were made jointly by employers (6.2 per cent) and their employees (1.6 per cent). In 1995, a total of 600,000 people had received unemployment benefit, including some 200,000 in Andalusia. Employment of persons under the age of 16 was punishable by law.

45. With a view to reducing the high level of youth unemployment, apprenticeship contracts had been introduced with a fixed wage amounting to approximately 90 per cent of the normal wage. Young people sometimes earned less than the minimum wage, for if they only worked 50 per cent of a normal day, they were only entitled to half a day's pay. During apprenticeship, 15 per cent of working time was set aside for training. The scheme aimed to encourage companies to convert apprenticeship contracts into permanent contracts through financial incentives.

46. Employees were entitled to participate in discussions on the prevention of work-related accidents (covered by Act No. 31/1995). Penalties existed if regulations were breached. From 1990 to 1994, work-related accidents had fallen by approximately 17.5 per cent to around 1 million. There was no cause for complacency, however; all such accidents must be eliminated.

47. No discrimination existed against women apprentices regarding the termination of contracts. If apprentices, freelances and seasonal workers did not contribute to unemployment insurance, they could not claim the corresponding benefit. They were, however, all entitled to contributory accident, illness and maternity benefits and pensions.

48. The right to strike was established in article 28 of the Constitution, although restrictions on the exercise of that right could be introduced since Act No. 77 stated that no constitutional right was unlimited. A strike must establish precise guarantees to ensure that services to the community were maintained. In recent years, there had only been one complaint regarding the right to strike. It had been submitted by the Trade Union Confederation concerning the right to strike of employees of the Ministry of Education and Science. ILO had maintained that there had been no violation with regard to the freedom of association.

49. Only a judicial authority could determine whether it was necessary to guarantee a minimum level of services during a particular strike. The right to strike in Spain was, however, fully respected. In 1992 and 1994 there had been two general strikes, affecting approximately 35 per cent and 40.2 per cent of employees respectively. Some 5.4 million workers had been involved in strike action in 1994, with a total of 6.4 million working days lost. That represented 1.15 days per striker. In 1995, 511,000 workers had gone on strike with a corresponding loss of 1.2 million days, amounting to an average of 2.4 working days per striker.

50. All workers were entitled to be affiliated to the social security system providing their work was legal and they were over 16 years of age. Spain's

labour statistics only referred to legally employed workers. In 1995, 300,000 people in the 16-19 age group had been covered by social security, representing slightly more than 2 per cent of the working population.

51. Spain had ratified ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, in which article 9 established that national legislation must determine how far the right to form trade unions was guaranteed to the armed forces and police. The Spanish Constitution and the Organization Act of 1985 provided that that right could not be exercised by the members of the armed forces or Guardia Civil, although the latter were permitted to form associations.

52. The Labour Inspectorate conducted spot checks on those sectors most likely to be employing minors, but breaches were virtually impossible to detect.

53. A resident of Spain without sufficient means was entitled to a non-contributory pension. Retirement pensions were awarded to 65-year-olds and disabled persons over 18 could claim disability pensions, the level of which was fixed in the annual State budget. The State's contribution to social security in 1995 had totalled 0.49 per cent of GDP.

54. Regarding obstacles to full implementation of the Covenant in Spain, subsequent Governments would need to abide by the Toledo Agreement (Initial Symposium on the Integration of Young People into Society, Toledo, 4-8 June 1990) and ensure that all the rights were truly realized. The necessary funding would need to be kept separate from taxation and special reserves must be established to take into account economic cycles. Contributions should be restricted to genuine wage-earners in order to simplify their collection. Social allowances must be reduced with a view to stimulating employment, and the age of retirement must be made flexible and the purchasing power of pensions maintained.

The meeting rose at 6 p.m.